IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 123

DA 53/1993

Between

Tai Wah Garments & Knitting Factory Pte Ltd

… *Appellant*

And

Tan Pui Liang

… *Respondent*

GROUNDS OF DECISION

Land — Adverse possession

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Tai Wah Garments & Knitting Factory Pte Ltd v Tan Pui Liang and Others

[1995] SGHC 123

DA 53/1993
G P Selvam J
06 May 1995

1 **The facts**

2 Cur Adv Vult

3 This is an appeal against the decision of the district court. The subject matter of the case is the property known as 406 North Bridge Road, Singapore. The appellants herein who were the plaintiffs below had purchased the property from Tai Wah Trading Co Ltd in 1977. The conveyance was in respect of lot 178-2 (4,683 sq ft) of TS XI comprising Nos 404, 406 and 408 North Bridge Road, Singapore.

4 Tai Wah Trading Co Ltd itself had purchased the property in 1967. It was then in the occupation of Tan Pui Liang, the first defendant in the district court case, on a monthly tenancy. The first defendant had been paying rent to Tai Wah Trading Co Ltd. The plaintiffs, therefore, acquired the property subject to the tenancy of the first defendant and the possession and/or occupation by one or more of the other three defendants.

5 The events that led to the suit in the district court are as follows: The rent receipt issued by the plaintiffs` predecessors to the first defendant contained a condition that there would be no subletting, assignment or transfer of the tenancy.

6 In 1969 the fourth defendant (Tan Cheon Hock) had a meeting with one Mr Chee Choon Seng of Tai Wah Trading Co Ltd. The fourth defendant wanted a transfer of the tenancy from the first defendant to himself or alternatively he wanted to purchase the property. Mr Chee turned down the proposal. Nothing came out of that brief encounter.

7 The first defendant wrote a letter dated 30 July 1969 to Tai Wah Trading Co Ltd notifying them that he had assigned the tenancy of the premises to one Tan Kheng Guan and that Tan Kheng Guan would be responsible for paying the monthly rentals. No document purporting to evidence the assignment of the tenancy accompanied the letter. The fourth defendant was the son-in-law of the Tan Kheng Guan. On 3 November 1989 Tan Kheng Guan`s solicitors (M/s Tang & Tan) wrote to Tai Wah Trading Co Ltd forwarding the rental of $660 for the `8th, 9th and 10th Moons, Chi Iu Year` in respect of the property. This was followed by another letter of 12 December 1969 from the same solicitors forwarding the rental of $440 for the `11th and 12th Moons, Chi Iu Year.`

8 On 12 December 1969 Tai Wah Trading Co Ltd`s solicitors (CS Tay & Co) acknowledged the two cheques for $660 and $440 and sought the following information:

> *1 The date of your client`s occupation of the abovesaid premises as a tenant.*
>
> 2 From whom did your client take over the tenancy from?

> 3 Any proof of agreement showing your client`s tenancy or the assignment of tenancy from the previous tenant?
>
> 4 Production of rent receipts or previous rent receipts.

9 There was no response in substance to the letter from Tang & Tan. So CS Tay & Co on 13 February 1970 wrote directly to Tan Kheng Guan as follows:

> *We act for M/s Tai Wah Trading Co Ltd.*

10 We are instructed by our clients that they recently came to know that you are the new occupier of the abovenamed premises which premises belong to our clients.

11 We hereby request you to supply us the following enquiries under s 21 of the Control of Rent Ordinance (Cap 242).

> *1 The commencing date of your occupying the said premises and if there is any tenancy agreement, please furnish same to us for our inspection.*
>
> 2 From whom did you take over the tenancy.
>
> 3 Any rent receipts or previous rent receipts for our inspection.
>
> 4 Whom did you tender rent before.
>
> 5 Any other tenants occupying the premises now other than yourself and their names and the date of occupation.
>
> *Please take note that failure to comply with our request for such inquiries shall render you to conviction for a term of imprisonment not exceeding six months or to a fine not exceeding one thousand dollars.*

12 The letter made it abundantly clear that there was a Control of Rent Act problem.

13 Tan Kheng Guan`s solicitors once again on 17 February 1970 forwarded a cheque for $440 being the rents for `the 1st and 2nd Moons of the current year` and also said that they would write soon. This plainly meant that they would write on the information sought. But it was not done. So CS Tay & Co, wrote on 8 April 1970 to Mr Tang Liang Hong, Tan Kheng Guan`s solicitor, as follows:

> *We refer you to our letter dated 19 December 1969 and to our letter dated 13 February 1970 to your client upon which we have not received any reply.*

14 We are instructed by our clients that your client came into the premises without our clients` consent and therefore he has no right of occupation in the said premises therein. ***Our clients recognize Tan Puay Lian as their tenant and there was an agreement between them that he cannot sublet or assign or transfer any part of the said premises to anyone unless written consent has been obtained from our clients.***

15 ***In view of the above premises your client has not sought any consent from our clients, therefore our clients reject him as their tenant and therefore he is unlawfully occupying the said premises as a trespasser.***

16 We return herewith the three cheques paid by your client. Kindly acknowledge receipt.

17 We hereby give your client notice and demand that he should remove and vacate the said premises within two (2) weeks or else our clients may have to take out legal proceedings to recover the said premises from your client. [Emphasis added]

18 What is clear is that as far as Tai Wah Trading Co Ltd were concerned, the first defendant continued to be the tenant and they recognized his contractual as well as statutory right of possession of the property.

19 There was also an unstamped, and undated as to date and month but bearing the year 1969, document which purported to be an assignment of the tenancy from the first defendant to Tan Kheng Guan.

20 Then on 8 February 1971 Tang & Tan wrote to CS Tay & Co on behalf of Tan Kheng Guan, offering $5,000 `with a view to rectifying the relationship`. This was again rejected by CS Tay & Co.

21 From the letters and the document it is abundantly clear that an assignment of tenancy was asserted on behalf of Tan Kheng Guan and not the fourth defendant, who, as far as Tai Wah Trading Co Ltd was concerned, did not show himself to them apart from the brief encounter he had with Mr Chee which resulted in nothing. It is also clear that it was Tan Kheng Guan who was treated as a trespasser by Tai Wah Trading Co Ltd and not the fourth defendant. The evidence before the court showed that Tan Kheng Guan was never in occupation of the property at any time. Accordingly, as far as the plaintiffs are concerned, there was no effective assignment of tenancy to Tan Kheng Guan. One further point that emerges from the letters and documents is that Tai Wah Trading Co Ltd was asserting its rights under the Control of Rent Act. It was appreciated that an action for possession had to comply with the provisions of the Control of Rent Act.

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22 Nothing of moment happened until 1988 except that in 1977 the property changed hands to the plaintiffs who, in effect, were under the management of the same persons as their predecessors.

23 In the interim, the plaintiffs` rent collector was looking for the first defendant but failed to find him. The efforts made by him appear to be anything but strenuous.

24 The next main event occurred in 1988. Abraham Low and Partners, solicitors acting for the plaintiffs, on 17 November 1988 wrote to Jubilee Records Trading Co, the business name of the fourth respondent and Daguerre Photo Studio (the third defendants), referring to their occupation of the premises and asking how they came to occupy the property, the amount paid for such occupation, the party to whom the amount was paid and the address of all occupiers of the premises.

25 Drew & Napier, solicitors for Jubilee Electronic Pte Ltd , wrote saying that their clients had taken over the business and assets of Jubilee Records Trading Co. It was asserted that neither Jubilee Electronic Pte Ltd nor Jubilee Records Trading Co had paid any rent to the true owner nor had they acknowledged his title to the property for a considerable time. `Your clients,` the letter said, `as the owners have lost their right and our clients are not obliged to furnish them the information they require.`

26 Daguerre Photo Studio`s solicitors, Sukumar & Teo, wrote stating that their clients had been in occupation since 1942 and that no payment was made.

27 **The suit in district court**

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28 In May 1989, Abraham Low & Partners served a notice to quit on the first defendant and commenced DCS 3983/89.

29 In their statement of claim the plaintiffs asserted that it was a term of the tenancy that there would be no subletting, assignment or transfer of the tenancy. They further asserted that the first defendant breached the alleged condition against subletting, assignment or transfer in that he purported to assign the tenancy or sublet the premises to one Jubilee Records Trading Co without the plaintiffs` consent. The plaintiffs, by a notice to quit dated 2 May 1989 and served on the first defendant terminated the tenancy and instituted proceedings seeking possession of the premises. The statement of claim said that the first defendant was not in occupation of the premises and resided at Blk 46, Circuit Rd, #06-646, Singapore.

30 The plaintiffs joined three other parties as defendants: the second defendants who were in occupation of the ground floor, the third defendants Lim Ming Joon and Chong Jeng Chong trading as Daguerre Studio who occupied the upstairs and the fourth defendant, Tan Cheon Hock alias Tan Chong Hock, who claimed to be in occupation of the premises. An order for vacant possession was sought against all the defendants.

31 **Default judgment against the first defendant**

32 The first defendant did not enter an appearance with the result that the plaintiffs were given judgment against him.

33 **Defence and counterclaim of second defendants**

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34 The second defendants entered an appearance and filed a defence and a counterclaim. They said that they and the fourth defendants were `either jointly and/or separately` in occupation of the premises. It was claimed that the fourth defendant since 22 February 1968 carried on business at the premises under the sole-proprietorship called Jubilee Records Trading Co. He incorporated the second defendants which took over the business, assets and liabilities of the sole proprietorship and became the managing director of the second defendants. In any event, it was said, the fourth defendant separately and/or jointly occupied the premises. Neither the second defendants nor the fourth defendant had paid rent or other payment to the plaintiffs since 1970. It was further alleged that they did not acknowledge the plaintiffs as the owners of the premises. Then came the critical assertion that the second defendants and/or the fourth defendant had acquired possessory title to the premises. There was a counterclaim by the second defendants to that end. Reliance was placed on ss 9(1) and 18 of the Limitation Act (Cap 163). By way of further particulars it was said that the second defendants occupied the upstairs by the third defendants who paid rent to the second defendants at the specific direction of the fourth defendant.

35 **Defence of the third defendants**

36 The third defendants filed a defence saying that they were the tenants of the second defendants and/or the fourth defendant, whom they acknowledged as the owners of the premises and their landlords. The third defendants further affirmed the assertions of the second defendants.

37 **Defence and counterclaim of the fourth defendant**

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38 The fourth defendant entered appearance and filed his own defence and counterclaim. The position he took was based on the same factual assertions made by the second defendants. He also claimed ownership by adverse possession.

39 **An omission point in the defences**

40 None of the defendants who filed defences addressed the question of the contractual tenancy of the first defendant or the assignment against prohibition asserted by the plaintiffs. They did not plead a positive case on that issue. They did not in their defence deal with the position of the first defendant and his relationship with the plaintiffs and the defendants.

41 **The decision below**

42 The judge below correctly saw no need to distinguish Tai Wah Trading Co Ltd and the plaintiffs (Tai Wah Garments & Knitting Factory Pte Ltd) as separate entities and used the term `plaintiffs` interchangeably to refer to either of them unless the context otherwise required. The judge found that in 1967 Tai Wah Trading Co Ltd purchased the property subject to the first defendant`s tenancy as the first defendant had been in occupation of the premises as a tenant from 1950.

43 The judge said in his judgment that the first defendant had no longer any interest in the premises as he had purportedly assigned the tenancy and vacated the premises to the occupation and control of the fourth defendant sometime in 1969. He went on to say that `sometime in 1969`, the first defendant purportedly assigned his tenancy of the said premises to the fourth defendants`s father-in-law under an undated written assignment.

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44 At the trial it was agreed between counsel that `the premises were under the Control of Rent Act but the Act was not in issue.` The judge accepted that as the correct position and decided to conduct the trial on that basis. It was not a prudent step because the Control of Rent was a very relevant statute.

45 At one stage, after the plaintiff had closed their case, and during the evidence of the fourth defendant as the fourth defendant`s witness was in the stand, the judge posed this question to counsel:

> *Counsel, what is the agreed position on the provisions of the Control of Rent Act. I have noted what both counsel have informed me in chambers that the said Act is not in issue. Is it by agreement that in the event that this court finds in favour of the plaintiffs the matter would be disposed of? I want to know if there will be finality in my decision as far as this point is concerned.*

46 Counsel for the plaintiffs said:

> *The plaintiffs accept that the premises are rent controlled, but take the position that defendants are not protected. Proceedings have been conducted such that these issues are not relevant.*

47 Counsel for the defendants said:

> *I agree with the plaintiffs` counsel that the premises come within the Control of Rent Act but do not agree that the Act is irrelevant. I am now instructed to apply for an amendment of defence and counterclaim by adding an alternative relief that the defendants are protected under the Act.*

48 Counsel for the plaintiffs objected to the proposed amendment. The judge disallowed the application for the amendment and suggested to counsel that they make submissions on the pleadings as they stood.

49 There were written submissions.

50 The judge in his grounds of decision said that there were only three main issues for the court`s adjudication and stated them as follows:

> *1 Whether the cause of action accrued to the plaintiffs from more than 12 years preceding the commencement of action, ie on or before 21 July 1977.*
>
> 2 Whether the plaintiffs having commenced this action only on 21 July 1989 are therefore statute-barred by s 9(1) of the Limitation Act (Cap 163) from recovering possession of the said premises.
>
> 3 Whether the defendants (in particular, the fourth defendant) had been in adverse possession of the said premises so as to deprive the plaintiffs of the benefit of s 15(1) of the Limitation Act (Cap 163) which provides the prerequisite condition for the statutory time limitation to begin to run.

51 He then decided on the affirmative on all the three issues and dismissed the plaintiffs` claim with costs. He further allowed the counterclaim for a declaration and made an order in favour of the second defendants for title acquired by virtue of adverse possession.

52 **The relevant statutory provisions**

53 It is noted that the judge failed to include in his statement of issues one important point, namely, the plaintiffs` case that according to them they considered the first defendant to be the contractual tenant until his contractual tenancy was terminated for breach of the terms of the tenancy agreement. This was the crux of the plaintiffs` case.

54 Before considering the issues, the evidence and the decision below, it is necessary to set out the relevant statutory provisions.

55 First, the pertinent provisions of the Limitation Act are as follows:

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Section 2(4)

References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land.

Section 9(1)

No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.

Section 10(1)

Where the person bringing an action to recover land or some person through whom he claims has been in possession thereof and has, whilst entitled thereto, been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

Section 13

(1) A tenancy at will shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination.

Section 15

(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (referred to in this section as adverse possession) and where under this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be

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> deemed to accrue unless the land is again taken into adverse possession.

56 Next, the relevant provisions of the Control of Rent Act are as follows:

> *Section 14*
>
> *No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the cases set out in the Part.*
>
> *Section 15(1)*
>
> *In the case of all premises such an order or judgment as is referred to in section 14 may be made in any of the following cases:*
>
> *(a) where at the date of the notice determining the tenancy given by the landlord rent lawfully due was in arrear for 21 days or upwards after notice of demand in writing had been served on the tenant and there was no tender thereof at or before that date and the court considers it reasonable that such an order or judgment be made or given;*
>
> (b) where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under the provisions of this Act) so far as the obligation is consistent with the provisions of this Act, has been broken or not performed by the tenant and the court considers it reasonable that such an order or judgment be made or given.
>
> *Section 21*
>
> *Where the tenant of any premises has sublet any part thereof the tenant shall within 14 days after the subletting supply the landlord with a statement in writing of the subletting giving particulars of occupancy, including the name of the subtenant and the rent charged, and if without reasonable excuse he fails to do so or supplies a statement which is false in any material particular, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 6 months or to both:*

57 Provided that it shall not be necessary to supply a statement of the subletting of any such part as aforesaid where the particulars to be given therein as to the rent and other conditions of the subtenancy would be the same as in

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the last statement supplied in accordance with the requirements of this section with respect to a previous subletting of that part.

58 Finally, the Conveyancing and Law of Property Act provides, inter alia, as follows:

> *Section 18*
>
> *(1) A right of re-entry or forfeiture under any provision or stipulation in a lease, for a breach of any covenant or condition in a lease, shall not be enforceable, by action or otherwise, unless the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.*
>
> …
>
> (8) This section shall not extend to a covenant or condition against the assigning, under-letting, parting with the possession or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee`s interest.

59 **Two Court of Appeal decisions**

60 Next, it is necessary to refer to two decisions of the Court of Appeal which became available only after the arguments before in this appeal were concluded. The first case is . I shall refer to this case as `the case`. The other case is . I shall refer to this as `the case`.

61 **The Wama case**

62 The appellants in the case were the personal representatives of the estate of one Lee Chong Miow deceased (Lee). Lee was the registered owner of a

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certain piece of land in the district of Upper Bedok, Singapore (the land). The respondent Wama bte Buang`s father, Buang bin Mamat, had been a ground tenant of the said land since 1945. He used to pay Lee a monthly rent of $2. Wama was born on the said land in 1958 and lived there all her life. In 1965, Buang stopped paying Lee the ground rent of $2 per month as Lee refused to receive it. Lee died in 1969. A valuation report prepared for the estate of Lee, deceased, stated inter alia that `According to the result of a search conducted at Property Division, the annual value of the subject property did not appear on the valuation list in the year 1969`. Since then no rent was paid by Buang or Wama. In 1976 Buang died. From then Wama and her stepbrother occupied the said land uninterruptedly until 1990, when she started the proceedings. During that time she had exclusive possession of the property. I tried the case and held that Wama had had continuous adverse possession of the said land since 1976 (the year Buang died) and that all rights and title of the registered owner, his personal representatives or any person claiming under him to the said land or the recovery thereof had been extinguished by virtue of ss 9 and 18 of the Limitation Act. No evidence was called by the appellants to challenge the claim for adverse possession. The Control of Rent Act and s 13 of the Limitation Act were not expressly pleaded by either party. My decision was reversed by the Court of Appeal consisting Yong Pung How CJ, Karthigesu JA and LP Thean JA. The decision of the Court of Appeal is summarized in the headnote as follows:

> *(1) Possession cannot be adverse if it can be referred to a lawful title, namely, to the continuing licence and permission of the true owner. Buang`s occupation of the said land arose initially from a tenancy agreement which ceased before Lee`s death in 1969. It followed that Buang`s occupation of the said land after the cessation of the tenancy stemmed from Lee`s permission and no more. The respondent being a family member of Buang, her occupation of the said land until Buang`s death in 1976 was,*

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> *accordingly, not independent of Buang`s occupation of the said land.*
>
> (2) A case of adverse possession had not been made out. There was lacking in the evidence anything in the nature of an ouster of the true owner. The burden is always on the respondent to prove that her possession was adverse to the true owner. In any event, abandonment of possession alone - of which there was no evidence - could not be enough to make out a case of adverse possession without there being some evidence of ouster.
>
> (3) The learned trial judge had failed to consider whether the respondent had the requisite intention to possess (). The evidence showed that the appellants as the personal representatives of Lee must have been aware that Lee owned the said land. It was therefore a reasonable inference that the appellants knew that Buang and his family occupied the said land and permitted them to continue in occupation. The evidence also showed that the respondent simply continued to live on the said land after Buang died in 1976 because she had nowhere else to go. The fact that there was a hut and fencing on the land did not amount to an ouster or give the respondent the requisite ; the fencing which ran round the perimeter of the said land was already there before Buang came onto the said land. The simple truth of the matter was that after Lee ceased to accept rent from Buang, the subsequent occupation of the said land by Buang and the respondent was no more and no less than with the tolerance of Lee, and after his death, with that of the appellants.

63 In the reasons given by Karthigesu JA, who delivered the judgment for the Court of Appeal, the explanation of limitation of action in relation to land in (4th Ed) by RE Megarry and HWR Wade was dismissed out of hand as a philosophical discourse which was not the law. The Court of Appeal relied heavily on .

64 The Court of Appeal also relied on for the proposition that `where possession at its inception is merely permissive, it is not possible to put an end to that possession by a secret intention in the mind of the person in possession There must be an ouster.` The Court of Appeal then said, `There was no evidence before the court where such an ouster could be inferred.` The non-

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payment of rent and open exclusive possession by Wama was, therefore, rejected as being insufficient to found an ***animus*** of ouster.

65 **The Maimon case2**

66 In the ***Maimon*** case2 the respondent, who was administratrix of the estate of her mother, Sukinah bte Haji Hassan deceased, claimed possessory title to the land on which house, No 111-G Kampong Amber, Singapore, stood. The paper title to the land was in the name of the appellants as trustees for the Chinese Swimming Club (the club). Originally, the respondent`s mother had owned the house, 111-G Kampong Amber. The mother lived in it and paid a ground rent of $1 per month to The Bankers Trust Co Ltd as trustee for the club. The respondent herself lived in this house from early 1950 onward. In April 1978, the respondent`s mother passed away and from then on no rent was paid to the club in respect of this land by the respondent or anyone else. In September 1978, the respondent moved out of the house and rented out the house. The respondent`s tenant paid her the monthly rent of $110. This was inclusive of electricity and the PUB account continued to be in the respondent`s name. Subsequently, the tenant agreed to be responsible for the electricity charges himself and the respondent reduced the rent to $80 a month. By a letter dated 20 March 1984, the club gave notice purporting to terminate her mother`s tenancy with effect from 30 April 1984. However, no ejectment proceedings were taken by the club nor did the respondent begin paying any rent. In 1985, the respondent complied with a notice from the Ministry of Environment requiring the installation of a rural sewerage system at a cost of $2,350. In November 1991, she paid $291 for some repairs to the house.

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67 The club`s case was that it permitted the respondent`s mother to have occupation of the land as ground tenant as it did not have an immediate use for the land and that negotiations had been carried out between the club and the respondent on the basis that the club was the landlord and the respondent was the tenant. These negotiations proved futile. Eventually the club submitted plans for the development of the land and applications were filed with the Tenant`s Compensation Board on 26 December 1992 to recover possession of the same. At the hearing before the Tenant`s Compensation Board the respondent claimed adverse possession. Subsequently, she commenced action in the High Court claiming possessory title to the land.

68 Judith Prakash JC held in favour of the respondent. In her decision Judith Prakash JC said:

> *The club`s submission was that (the respondent`s mother) Chik Sukinah`s ground tenancy continued after her death, vesting first in the Chief Justice and later in the plaintiff after she had obtained the grant of letters of administration to her mother`s estate. The tenancy continued thereafter until it was terminated with effect from 30 April 1984 by virtue of the notice to quit dated 20 March 1984. The club asserted that time did not start to run before that because the provisions of the Control of Rent Act precluded any action to recover possession. I was unable to accept this argument as it was clear from the cases [1952] 2 QB 533 and [1978] 1 QB 264 that in the case of a landlord/tenant situation where the occupation of the tenant becomes adverse due to a refusal or failure to pay rent, time continues to run from the date that the contractual tenancy ends notwithstanding that in the meantime the tenant may have acquired the status of a statutory tenant thus preventing the landlord from recovering possession because of the application of the Control of Rent Act. Thus, the plaintiff`s position as a statutory tenant could not prevent the operation of s 13(3) of the Act.*

69 I also rejected the club`s further submission that the plaintiff was merely a licensee of the land. The extent of control which first Cik Sukinah and later the plaintiff exercised over the land as shown in the erection and occupation of

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the plank and zinc house was completely inconsistent with any residual rights of control over the land being exercised by the club. The plaintiff`s possession was adverse to the club because it meant that the club could not use the land for any other purpose without regaining possession from her.

70 I was satisfied on the evidence that Cik Sukinah was a monthly ground tenant of the club. I was also satisfied that no rent was paid after March 1978 and thus, pursuant to s 13(3) of the Act, the club`s right to recover possession accrued, at the latest, on 1 April 1978. I therefore agreed that, as from April 1978, the plaintiff was in adverse possession of the land and if this possession continued uninterrupted, the plaintiff would have acquired a possessory title to the land by end March 1980.

71 The decision of Judith Prakash JC was upheld by the Court of Appeal constituted by Karthigesu JA, LP Thean JA and Goh Joon Seng J. The written reasons for the decision were given by Goh Joon Seng J.

72 Goh Joon Seng J stated succinctly:

> *adverse possession is made out when the adverse possessor is in physical possession of the land as if he was the true owner with the intention to exclude all others, including the owner with the paper title.*

73 The plaintiff (respondent) had been living in the property in question with her mother Sukinah since 1950 when the latter was tenant paying the monthly rent of $1. When her mother passed away in April 1978 she continued to live there without paying any rent. The Court of Appeal held that on those simple facts the respondent had:

> *been in adverse possession of the land in question since April 1978. Whilst she was still staying in the house, factual*

> *possession was clearly present as she physically occupied the land. The requisite* ***animus possidendi*** *was also clearly evidenced by the open and exclusive nature of her occupation.*

74 Although subsequently she moved out of the property by letting others occupy the property as `tenants`, the Court of Appeal held that `she continued to be in adverse possession of the land through her tenants whose occupation was also open to the exclusion of all others.` Goh Joon Seng J made no reference to the ***Wama*** case1.

75 **Conflict in the authorities**

76 I must with profound respect to the Court of Appeal admit that I am unable to reconcile the ***Wama*** and the ***Maimon*** cases. I must further admit that I find it impossible to extract a consistent principle of law applicable to the following factual matrix.

77 A tenant ceases to pay rent but continues the open and exclusive possession and subsequently dies. Then a member of the family of the erstwhile tenant continues the open and exclusive possession for more than 12 years without paying rent. According to the ***Maimon*** case2 the member of the family acquires title by adverse possession. The requisite ***animus possidendi*** is manifest in the open and exclusive possession. According to the ***Wama*** case1, however, as possession at its inception was permissive, a continuing permissive user should be inferred and it is not possible to put an end to the original permissive possession by a secret intention in the mind of the person in possession. There must be an ouster. What is the nature of the requisite ouster we are not told. In other words non-payment of rent and open and exclusive occupation, it would appear, are overridden by the original permissive occupation and user. On the essential facts it appeared to me that ***Wama*** had

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stronger facts in her favour in that, to the knowledge of the owner, the property was not in the annual list and the owner called no witness at all to prove the alleged permissive user.

78 **Applicable principles**

79 Subject to the difficulties I encountered with the ***Wama*** and ***Maimon*** cases, the following principles may be extracted from: 3

> (1) `Adverse possession`, in short, is denial of the owner`s title.
>
> (2) Possession cannot be adverse if it can be referred to a lawful title, namely, to the continuing licence and permission of the owner.
>
> (3) Where possession at its inception is merely permissive, it is not possible to put an end to that possession by a secret intention in the mind of the person in possession. There must be an ouster.
>
> (4) Non-payment or collection of rent or any other charge for occupation and exclusive possession by an occupant by themselves do not by themselves constitute adverse possession.
>
> (5) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prima facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.
>
> (6) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ().
>
> (7) Factual possession signifies an appropriate degree of physical control. It must be a single and conclusive possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular, the

> nature of the land and the manner in which land of that nature is commonly used or enjoyed.
>
> (8) The , which is also necessary to constitute possession, is the intention of excluding the owner as well as other people. The involves the intention, in one`s own name and on one`s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the process of the law will allow.
>
> (9) The question of is of crucial importance in every case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. The slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. Where the question is whether a trespasser has acquired possession, the courts will require clear and affirmative evidence that the trespasser claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite and consequently as not having dispossessed the owner.

80 **A preliminary point on procedure**

81 Before I consider the appeal it is necessary to deal with a procedural problem raised by the plaintiffs on appeal.

82 At the hearing of the appeal, the respondents (the second defendants and fourth defendants below) made s 13 of the Limitation Act a principal ground of their submission in support of the decision of the district court. The plaintiffs objected to this on the ground that it was not expressly pleaded and so it was not referred to or dealt with by the judge in his grounds of decision. There was no respondent`s notice to support the judgment by placing reliance on that section.

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83 The respondents said this was incorrect and said it was pleaded and that the judge dealt with it in his grounds of decision. The assertion, however, fizzled out when counsel was asked to show the reference. All that he could point out was that the section had been referred to in his written submissions. It was clear that the judge ignored it, presumably because it had not been pleaded.

84 Notwithstanding that, I ruled that I would allow the point to be argued by both sides and when evaluating the arguments I would decide to exclude the reliance on s 13 of the Limitation Act if the point was taken unfairly. The respondents were not content with my ruling and sought to amend the defence and file a respondents` notice to include s 13 of the Limitation Act. It was said for the respondents that the amendment would not prejudice the plaintiffs as all the facts and evidence were before the court. The plaintiffs disagreed with this contention. I disallowed the application for amendment. The respondents filed an appeal against that ruling.

85 Unquestionably s 13 was not pleaded by the defendants. This did not accord with O 18 r 7(2) of the Rules of the Subordinate Courts. It says that `a defendant to an action for the recovery of land must plead specifically every ground of defence on which he relies.` The plaintiffs were entitled to insist on compliance with this rule.

86 However, as I directed the plaintiffs to address the point and they have done so, I came to the conclusion that the plaintiffs were not seriously prejudiced by the respondents` raising s 13 of the Limitation Act at the appeal stage.

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87 In doing so I accepted the plaintiffs contention that s 13 was subject to s 15 of the Limitation Act. Section 13 in my view merely states a common law rule on adverse possession. Section 13 in effect begs the question for it applies only if adverse possession is taken as stipulated in s 15 of the Limitation Act. Non-payment of rent by itself is insufficient evidence of adverse possession if there is other evidence to disprove adverse possession. The real question therefore is whether there was adverse possession. I therefore allowed s 13 to be part of the appeal.

88 **Consideration of the appeal**

89 I shall now consider the appeal proper. This case is radically different from the usual case in two important aspects: First, this is not a straight dispute between the paper title owner and a tenant or owner who took his stead and who claimed to be adverse possessor. The adverse possession was asserted by an assignee and it was supported by two others. Secondly, and this is more important, there is a judgment against the direct tenant who was also a tenant recognized as such by the property owner. That judgment was obtained in the selfsame proceedings and no attempt was made by anyone to set aside that judgment. Even though it was a default judgment it is a binding judgment and the court cannot ignore it. The judgment against the first defendant must be given proper consideration and effect in deciding the issue between the other parties to the proceedings. If the first defendant or any other party wanted to defend the case in the position of the first defendant, it was his right to enter an appearance or for the other defendants to intervene on his behalf. If that had been done, he or anyone in his stead was required to `plead specifically every ground of defence on which he relies`: See O 18 r 7(2) of the Rules of the Subordinate Courts. In addition, in respect of a point of law based on the

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Limitation Act there must be an express plea in the defence. Unless so taken the court must ignore the point in reaching its decision.

90 The plaintiffs brought the case against the first defendant and joined the other defendants as they had actual occupation of the property. This was done because of the provisions of the Control of Rent Act. The plaintiffs relied on the Control of Rent Act in that the first defendant was in breach of the terms of the tenancy agreement prohibiting assignment and transfer of the tenancy. On the evidence before the court this breach was established. The first defendant disappeared from the premises and the fourth defendant was in possession. The proper inference to be drawn was that that there was a breach of the prohibition in tenancy agreement as pleaded. None of the defendants made a special plea raising the protection given by the Control of Rent Act. At the eleventh hour, there was an attempt by the defendants to raise that plea. It was disallowed and there was no appeal against it. The plaintiffs, therefore, had made out their case against all the defendants for possession under the Control of Rent Act and had obtained judgment for possession. The courts must give effect to that judgment. Given that the fourth defendant carries a very heavy burden of proving adverse possession and given further that his right of occupation of the property did not derive directly from the plaintiffs but the first defendant, the judgment against the first defendant is a major obstacle to negotiate.

91 The defendants` plea of adverse possession must, therefore, be considered in the light of the above scenario.

92 **The defence of adverse possession**

93 As regards the defence of adverse possession, it can succeed only if the fourth defendant can prove adverse possession. The others were his under-tenants or licensees. The fourth defendant unquestionably had actual possession of the property for more than 12 years before the commencement of this suit against him and the other defendants. The plaintiffs, however, at all times considered and accepted only the first defendant as the tenant. Until the contractual tenancy was terminated as a prelude and precondition to the filing of the suit for possession under the Control of Rent Act, it continued to exist. Accordingly, while that contractual tenancy between the plaintiffs and the first defendant existed, the plaintiffs could not take any action for possession against any of the defendants. The legal possession by the first defendant and the actual possession by the other defendants was lawful and was not adverse against plaintiffs. In particular, the plaintiffs could take no action against the fourth defendant as he derived his right of possession from the first defendant. His possession could not be adverse to the plaintiffs: see .

94 It was argued for the last three defendants that a purported transfer of tenancy even against a prohibition against it vested it in the intended transferee. The basis of this argument is that equitable relief against forfeiture conferred by s 18 of the Conveyancing and Property Act. The question of relief against forfeiture, however, arises only where the lease provides for a right of re-entry for breach. Further, the section does not apply where the prohibition is against assignment of the lease: see sub-s 8. In any event the tenancy is not effectively transferred to prevent an action for possession by the landlord on the ground of an `assignment against a term prohibiting it: see .

95 I must now refer to part of the transcript of the cross-examination of the fourth defendant by the plaintiffs` counsel. It went this way:

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> *Plaintiff counsel: Let me suggest to you the plaintiffs` case.*
>
> I suggest to you that your conduct in the course of the occupation by yourself as a sole proprietor and after May 1978 as a company does not show that you were treating 405 North Bridge Road as belonging to you.
>
> A: From 1971, no one has ever come to collect rental or inquire about the premises, I was solely taking charge of the repairs, so in this circumstances I had considered myself as owner of the property.
>
> Q: Suggest that you have never asserted a claim of ownership openly against the plaintiffs up to 22 November 1988?
>
> A: Yes, that`s correct.
>
> Q: Suggest, as well, that you never had the intention to adversely possess 406 North Bridge Road against the plaintiff.
>
> Defendant counsel: I object to this as witness does not know the meaning of adverse possession.
>
> Plaintiff counsel: I am only asking his state of mind as to his intention not his view of the legal position.
>
> Defendant counsel: Then we should clarify as to the time.
>
> Plaintiff counsel: Alright, my question is until 22 November 1988 you never had this intention.
>
> A: Yes, that`s correct.

96 There is, therefore, a clear admission by the fourth defendant which nullifies the ***animus possidendi*** of ouster. In fact, the evidence and documents as a whole show that the fourth defendant was merely interested in getting an assignment of the tenancy to his father-in-law and there was no clear intention on his part to oust the plaintiffs as owners of the property. Adverse possession was an afterthought.

97 On the other hand the plaintiffs always considered themselves the owners.

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98 Moreover, there was evidence to the effect that the plaintiffs at all times acted on the basis that they were the owners of the property. The plaintiffs had been attempting to locate the first defendant to enforce their rights of ownership and possession in respect of the property. The bill collector`s evidence bore this out. He visited the property on behalf of the plaintiffs - that is as `the landlord`s representative and not just any ordinary visitor.` It is a reasonable inference that the plaintiffs paid the property tax for the property and the fourth defendant must be deemed to be aware of this. This is clear evidence of assertion of ownership and its incidents. Since the slightest acts done by an owner will negative adverse possession, the position taken by the plaintiffs and the acts done by them go against any adverse possession by the fourth defendant.

99 As late as 1984 the plaintiffs created a mortgage in favour of Moscow Narodny Bank. This is a clear and firm act of assertion of ownership. It would indeed be odd if the bank were told that the mortgagor`s title had been extinguished by adverse possession which the bank had no way of finding out.

100 The repairs and maintenance of the property and payment of PUB charges by the occupants are unilateral acts and do not go towards denying the owners` title. The letter of 8 April 1970 from CS Tay & Co which treated the recipient as trespassers was written to someone who was not in possession of the property. The fourth defendant admitted that he never asserted a claim of ownership openly against the plaintiffs up to 22 October 1988. The defendants, therefore, were not entitled to place any reliance on that letter. The defendants, therefore, failed to show sufficient evidence of adverse possession.

101 When the plaintiffs` counsel said that the Control of Rent Act was the reason for the delay in commencing proceedings as the tenancy was protected

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by that Act, the trial judge dismissed the submissions out of hand. He rejected the Control of Rent Act argument made on behalf of the plaintiffs `as an afterthought rationalization for neglect in acting timeously, ill advised or not.` In my view there was much substance in what counsel for the plaintiffs said. It was common knowledge that an action for recovery of possession of these premises was governed by the Control of Rent Act. The procedure under the Control of Rent Act was cumbersome and where the breach was minor or remediable it was well nigh impossible to get an order for possession. The Control of Rent Act has everything to do with this case.

102 **Moses v Lovegrove**

103 and show that the Control of Rent Act poses no legal obstacle to the operation of the Limitation Act but it can form part of the factual matrix of the case and it did so in this case as it explained the owners` conduct in relation to the occupants and in particular the first defendant.

104 I therefore allow the appeal.

105 ***Appeal allowed.***

G P Selvam J

Harry Elias and Tan Chee Meng (Harry Elias & Pnrs) and Paul Low (Peter Moe & Pnrs) for the plaintiffs

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Morris John, Philip Lam and Anil Sachdev (Drew & Napier) for the defendants

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